

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGUARITE L. SHAHID and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 98-1746; Submitted on the Record;
Issued February 9, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the grounds that it was untimely filed and failed to demonstrate clear evidence of error.

On April 10, 1995 appellant filed a claim alleging that she sustained an emotional condition as a result of her federal employment. The claim was denied by the Office in a decision dated June 21, 1995 on the grounds that fact of injury was not established as there were no compensable factors of employment and deficiencies in the medical evidence.

By letter dated July 19, 1995, appellant requested a hearing from the Branch of Hearings and Review. Copies of letters from the employing establishment, doctor disability slips, witness statements and a statement from appellant were submitted.

By decision dated May 23, 1996 and finalized on May 29, 1996, an Office hearing representative affirmed the Office's previous decision finding that appellant had not established any compensable employment factors under the Federal Employees' Compensation Act and, therefore, had not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

By letter dated October 30, 1997, which the Office received on November 6, 1997, appellant requested reconsideration of her claim. She stated that she did "realize that my time has run out," but that her witness, Eppie Tompkins, was afraid to come forward because she feared what Joyce Jackson would do to her. Appellant stated that she got signatures from her witness along with other employees who have also filed harassment complaints against Ms. Jackson. She noted that, at the time of her complaint, Ms. Jackson was an acting supervisor. Submitted with her reconsideration request was a June 9, 1997 letter from appellant and her witness Ms. Tompkins along with five other postal clerks at the employing establishment, in which complaints and concerns pertaining to the supervisory skills of Ms. Jackson and Ms.

Williams were enumerated. Also an April 25, 1997 statement from JoAnne Hamilton described the general stressful environment and conditions of the employing establishment and how the supervisors did not operate in a professional manner.

By decision dated February 11, 1998, the Office denied appellant's request for reconsideration on the grounds that it was untimely and failed to show clear evidence of error.

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). The Office will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.¹ When an application for review is untimely, the Office undertakes a limited review to determine whether the application presents clear evidence of error that the Office's final merit decision was in error.² Since more than one year elapsed from the May 29, 1996 merit decision of the Office to appellant's October 30, 1997 reconsideration request, the request for reconsideration is untimely.

The Board has held, however, that a claimant has a right under 5 U.S.C. § 8128(a) to secure review of an Office decision upon presentation of new evidence that the decision was erroneous.³ In accordance with this holding, the Office has stated in its procedure manual that it will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.138(b)(2), if the claimant's application for review shows "clear evidence of error" on the part of the Office.⁴

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office.⁵ The evidence must be positive, precise and explicit and must be manifested on its face that the Office committed an error.⁶ Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.⁷ It is not enough merely to show that the evidence could be

¹ 20 C.F.R. § 10.138(b)(2). *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

² *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

³ *Leonard E. Redway*, 28 ECAB 242 (1977).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3 (May 1991). The Office therein states:

"The term 'clear evidence of error' is intended to represent a difficult standard. The claimant must present evidence which on its face shows that the Office made an error (for example, a proof of miscalculation in a schedule award). Evidence such as a well-rationalized medical report which, if submitted prior to the Office's denial, would have created a conflict in medical opinion requiring further development, is not clear evidence of error and would not require review of the case...."

⁵ *See Dean D. Beets*, 43 ECAB 1153 (1992).

⁶ *See Leona N. Travis*, 43 ECAB 227 (1991).

⁷ *See Jesus D. Sanchez*, *supra* note 2.

construed so as to produce a contrary conclusion.⁸ This entails a limited review by the Office of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of the Office.⁹ To show clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must be of sufficient probative value to *prima facie* shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of the Office decision.¹⁰ The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of the Office such that the Office abused its discretion in denying merit review in the face of such evidence.¹¹

In this case, the evidence submitted by appellant does not establish clear evidence of error as it does not raise a substantial question as to the correctness of the Office's most recent merit decision and is of insufficient probative value to *prima facie* shift the weight of the evidence in favor of appellant's claim. The Board notes that in this case appellant did not establish any compensable employment factors. The Board notes that the new evidence submitted by appellant is of limited probative value as it refers to general complaints and dissatisfaction of the work environment and does not specifically address appellant's particular situation or incidents particular to her. Thus, the evidence submitted by appellant is insufficient to establish clear evidence of error as it does not relate to appellant's specific claim, but rather relates to the general environment within appellant's work station.

As appellant has failed to submit clear evidence of error, the Office did not abuse its discretion in denying further review of the case.

⁸ See *Leona N. Travis*, *supra* note 6.

⁹ See *Nelson T. Thompson*, 43 ECAB 919 (1992).

¹⁰ *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

¹¹ *Gregory Griffin*, *supra* note 1.

The February 11, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
February 9, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member